

REMARKS

Claims 51, 53-55, 57, 59, 61-70, 82, 84-86, 88, 90, 107-109 are pending in this application. Claims 51 and 82 have been amended.

Claims 51 and 82 have been amended to recite groups for R_1 and R_2 that is (i) H_2N -, HS - and $-COOH$ and (ii) $COOH$ respectively. Support for these amendments can be found, for example, at paragraph 170 of the specification which provides in pertinent part:

...other linking groups for use within the linker $N-O-P$ can also include a hydrocarbon chain [i.e. $R_1-(CH_2)_n-R_2$] wherein n is 0-10, preferably $n=3$ to 9, R_1 is a group (e.g. H_2N -, HS -, $-COOH$) that can be used as a site for covalently linking the ligand backbone or the preformed metal chelator or metal complexing backbone or optical label; and R_2 is a group that is used for covalent coupling to the N-terminal NH_2 group of the GRP receptor targeting peptide (e.g. R_2 is an activated $COOH$ group)...

Therefore, no new matter has been added by way of these amendments.

Obviousness-type Double Patenting

With respect to the obviousness type double patenting rejection over of claims 51, 53-59, 61-70, 82, 4-86, 88, 90 and 107-109 over claims 1-22 of US Patent No. 7,226,577, solely to expedite prosecution, applicants have concurrently submitted a terminal disclaimer.

Regarding the remaining obviousness type double patenting rejections, applicants note that they are provisional in nature and will therefore be addressed once allowable subject matter has been found.

35 U.S.C. § 112 ¶ 1 and 2

Claims 51, 53-55, 57, 59, 61-70, 82, 84, 86, 88, 90, 108, 109 were rejected for alleged failure to comply with the written description requirement because “neither the claims nor the disclosure set forth what R_1 group ([sic – other] than $-NH_2$, $-SH$ and $-COOH$, see page 56, paragraph [00170] of the specification) can be used as a site for covalently linking M and the

R₂ group that is used for covalent coupling to the N terminal NH₂ group of G (other than –COOH, see page 56, paragraph [00170] of the specification).” 9/26/08 Office Action at p. 5.

Also, claims 51, 53-55, 57, 59, 61-70, 82, 84, 86, 88, 90, 108, 109 were rejected for alleged lack of enablement “because the specification, while being enabling for the R₁ groups –NH₃ [sic NH₂], –SH and –COOH and the R₂ group –COOH, does not reasonably provide enablement for all R₁ groups that may be used for covalently coupling the N-terminal NH₂ group of G,” 9/26/08 Office Action at p. 7.

Lastly, claims 51, 53-55, 57, 59, 61-70, 82, 84, 86, 88, 90, 108, 109 were rejected for alleged indefiniteness because “[t]he claims as written are ambiguous because it is unclear what groups are encompassed by the variables R₁ and R₂ as set forth in independent claims 51 (lines 35-37) and 82 (lines 32-34).” 9/26/08 Office Action at p.10.

Solely to expedite prosecution, applicants have amended independent claims 51 and 82 as described above. Applicants point out that claims 53-55, 57, 59, 61-70, 84, 86, 88, 90, 108 and 109 depend directly or indirectly from claim 51 and/or claim 82. Thus, these amendments obviate each of the pending § 112 rejections for the above independent and dependent claims.

In view of the foregoing, applicants respectfully submit that all outstanding rejections have been addressed and that the presently pending claims are therefore in condition for allowance. If a telephone interview would be of assistance in advancing prosecution of this application, Applicant’s undersigned attorney encourages the Examiner to telephone him at the number provided below.

No fee is believed to be necessary in connection with the filing of this Amendment and Response to Office Action. If any additional fee is necessary, however, applicant hereby authorizes such fee to be charged to Deposit Account No. 50-0540.

Respectfully submitted,

Dated: December 19, 2008

/Henry J. Cittone /
Henry J. Cittone, Reg. No. 57,206
Donald L. Rhoads, Reg. No. 34,705
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of Americas
New York, New York 10036
(212) 715-9100 (telephone)
(212) 715-8000 (facsimile)